

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:06CR120
)	
v.)	
)	
EVERADO GURROLA ARCIENEGA,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on the report and recommendation of the magistrate judge (Filing No. 14), recommending that defendant's motion to suppress (Filing No. 9) be denied. The defendant has filed an appeal (Filing No. 25) and a brief (Filing No. 26).

The Court has reviewed the transcript (Filing No. 16), the report and recommendation of the magistrate judge, and defendant's appeal and brief, and finds that the report and recommendation should be approved and adopted by the Court for the reasons stated by the magistrate judge in his opinion.

Under the circumstances of this case, the defendant had been identified as a drug dealer, and the encounter at Wal-Mart in Bellevue, Nebraska, had been arranged by a telephone call between a cooperating witness and the defendant which was monitored by a police officer. These facts, coupled with defendant's actions at Wal-Mart, justify a pat-down search to

insure officer safety, and the discovery of the drugs was simply incidental to a valid pat-down for safety. Accordingly,

IT IS ORDERED:

1) The report and recommendation of the magistrate judge is approved and adopted.

2) Defendant's motion to suppress is denied.

3) Trial of this matter is scheduled for:

Monday, July 31, 2006, at 10:30 a.m.

in Courtroom No. 5, Roman L. Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska. The first available date on the Court's trial schedule is July 31, 2006. The ends of justice will be served by continuing this case and outweigh the interests of the public and the defendant in a speedy trial. The additional time between June 23, 2006, and July 31, 2006, shall be deemed excludable time in any computation of time under the requirement of the Speedy Trial Act. 18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 23rd day of June, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court